

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER:

ADRIAN VAZQUEZ DIAZ

Debtor(s)

MONEY EXPRESS  
Movant

CASE NO.: 08-08828 (ESL)

CHAPTER 13

(X) An action against the State  
under Title 11 USC §1307 (c) (6),  
Title 11 USC §1326

**MOTION TO DISMISS**

TO THE HONORABLE COURT:

Comes now Movant, **MONEY EXPRESS**, through its undersigning attorney, and very respectfully ALLEGES, STATES and PRAYS:

1. This Honorable Court have jurisdiction under Title 28 USC §1334, and venue under Title 28 USC §1408, and particularly regarding this matter under Title 11 USC §1307(c) (1), (4) and (6), on Conversions and Dismissals, and Title 11 USC §1326, on Payments.

2. Debtor filed the instant petition under a chapter 13 on December 23, 2008. The confirmed plan dated June 5, 2009 provides for movant to be paid through the chapter 13. *See dck no 34 and 39*

3. MOVANT, standing to address this Court is ascertained as it filed an unsecured claim to a personal loan for the outstanding debt of \$4,913.19. *See Claims Register no. 1-1*

4. As of to September 22, 2010 debtor(s) already had the following installments owed to the chapter 13 Trustee: \$2,558.00 dollars, for eight (8) months in arrears. *See Exhibit A.*

5. This evidence as well, that debtor is not in compliance with the payments under the plan after confirmation under 11 USC §1307 (c) (6) that provides... Except as provided in subsection (e), of this section, on request of a party in interest or the United States trustee and after notice and hearing, the court may convert a case under this chapter to a chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interests of the creditors and the estate, for cause, including - .... (6) ... material default by the debtor with respect to of the

confirmed plan; ... and none compliance with the "new" provisions under 11 USC §1326(a) (1) Unless the court orders otherwise, the debtor shall commence making *the payments proposed by the plan 30 days after the plan is filed*; payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount - (A) proposed by the plan to the trustee;

6. Under the terms of the confirmed plan dated June 5, 2009 debtor(s) should have started to make continues payments since January 23, 2009, and as evidenced herein, the debtor(s) have failed to do so.

7. Pursuant to the Service Members Civil Relief Act: - the data banks of the Department of the Defense Manpower Data Center confirmed that the debtor(s) is (are) not member(s) of the Uniformed Services (US Armed Forces, Navy, Marine Corps, Air Force, NOAA, Public Health, and Cost Guard.) **Exhibit B**

For the reasons stated above, MOVANT respectfully request from this Court to enter an order dismissing the present case pursuant Title 11 USC §1307(c) (6) on Material default by the debtor with respect to a term of a confirmed plan, and 11 USC §1326(a) (1) Unless the court orders otherwise, the debtor shall commence making *the payments proposed by the plan 30 days after the plan is filed*; payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount - (A) proposed by the plan to the trustee

**NOTICE**

Within thirty (30) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this motion has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, this motion will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.

Puerto Rico Local Bankruptcy Rule 9013-1(h)

In San Juan, Puerto Rico, on September 28, 2010

### CERTIFICATE OF SERVICE

I hereby certify that a copy was served by CM/ECF at the authorized address: - to all creditors, - to Atty. Alejandro Oliveras//José Carrión Morales, as Chapter 13 Trustee, and - to the attorney of the debtor(s) JUAN CALDERON LITHGOW, and to debtor(s) by regular mail at the address on record, ADRIAN VAZQUEZ DIAZ, at PO BOX 2056, MOROVIS, PUERTO RICO 00687.

By: //S// María M. Benabe Rivera  
**MARIA M. BENABE-RIVERA, ESQ.**  
Attorney for Movant - US - DC 208906  
MARISTELLA SANCHEZ - RODRIGUEZ - US - DC 224714  
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maria.benabe@firstbankpr.com

[Rev.09/2010]

# **FIRSTBANK**

## ***Analysis Sheet to Determine Arrears to Trustee***

|                                    |          |  |
|------------------------------------|----------|--|
| <b>In Re</b>                       | <b>:</b> | <b>Adrian Vázquez Díaz</b>                         |
| <b>Case Number</b>                 | <b>:</b> | <b>08-08828</b>                                    |
| <b>Account Number</b>              | <b>:</b> | <b>9413</b>  |
| <b>Date of File</b>                | <b>:</b> | <b>12/23/2008</b>                                  |
| <b>Amount of Proof of Claim</b>    | <b>:</b> | <b>4,913.19</b>                                    |
| <b>Plan</b>                        | <b>:</b> | <b>283 x 6 (1,698.00)<br/>325 x 54 (17,550.00)</b> |
| <b>Monthly Payment of</b>          | <b>:</b> | <b>325.00</b>                                      |
| <b>Pass term</b>                   | <b>:</b> | <b>21</b>  |
| <b>Total paid in to plan</b>       | <b>:</b> | <b>4,015.00</b>                                    |
| <b>Should have paid in to plan</b> | <b>:</b> | <b>6,573.00</b>                                    |
| <b>Amount in arrears</b>           | <b>:</b> | <b>2,558.00 (7.87 arrears)</b>                     |
| <b>Printed on</b>                  | <b>:</b> | <b>09/22/2010</b>                                  |
| <b>Prepared by</b>                 | <b>:</b> | <b>Sonia Santiago</b>                              |

*exhibit a*

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|  |  |   |  |
|--|--|---|--|
| <b>08-08828-ESL ADRIAN VAZQUEZ DIAZ</b><br>(xxx-xx-9756) |  | PO BOX 2056 • \$325.00 MO Bar Date(s):    | 5/7/2009 (has passed) 6/21/2009 (has passed) |
| <b>Trustee: José R. Carrón</b>                           |  | • MOROVIS •<br>PR • 00687                 |  |
|  |  | <b>Attorney: JUAN O CALDERON LITHGOW*</b> | <b>Confirmed:</b> 6/19/2009                  |
|  |  |   | <b>Case Status:</b> ACTIVE                   |

**Financials**

| Date     | Payee | Payee Name                               | Source / Check  | Description  | Receipts | Disbursements |
|----------|-------|--|-----------------|--|----------|---------------|
| 9/1/2010 | 19    | RELIABLE FINANCIAL SERVICES              | 6240879         | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$5.15        |
| 9/1/2010 |       | JOSE R. CARRION                          | 557976          | TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS     |          | \$0.16        |
| 4/1/2010 | 1     | MONEY EXPRESS                            | 6239571         | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$66.14       |
| 4/1/2010 | 2     | BANCO POPULAR DE PUERTO RICO             | 6239580         | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$203.36      |
| 4/1/2010 | 8     | PR ACQUISITIONS LLC                      | 547266          | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$87.52       |
| 4/1/2010 | 15    | SANTANDER FINANCIAL D/B/A ISLAND FINANCE | 547160          | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$76.03       |
| 4/1/2010 | 17    | GE MONEY BANK                            | 6239649         | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$32.91       |
| 4/1/2010 | 18    | WESTERNBANK                              | 548237          | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$117.85      |
| 4/1/2010 |       | JOSE R. CARRION                          | 547991          | TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS     |          | \$63.07       |
| 3/2/2010 |       |  | 0500 00080 4498 | LOCKBOX PAYMENT                                      | \$325.00 |               |
| 3/2/2010 |       |  | 0500 00060 4500 | LOCKBOX PAYMENT                                      | \$325.00 |               |
| 1/1/2010 | 1     | MONEY EXPRESS                            | 6239072         | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$33.07       |
| 1/1/2010 | 2     | BANCO POPULAR DE PUERTO RICO             | 6239069         | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$101.67      |
| 1/1/2010 | 8     | PR ACQUISITIONS LLC                      | 541118          | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$43.76       |
| 1/1/2010 | 15    | SANTANDER FINANCIAL D/B/A ISLAND FINANCE | 541013          | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$38.02       |
| 1/1/2010 | 17    | GE MONEY BANK                            | 6239004         | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$16.45       |
| 1/1/2010 | 18    | WESTERNBANK                              | 542040          | CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS |          | \$58.92       |
| 1/1/2010 |       | JOSE R. CARRION                          | 541818          | TRUSTEE SALARY & EXPENSE -                           |          | \$31.53       |

|            |    |   |                    | MONTHLY DISBURSEMENTS                                      |          |            |
|------------|----|---|--------------------|--|----------|------------|
| 12/2/2009  |    | 0501 01740<br>0492                          | LOCKBOX PAYMENT    | \$325.00   |          |            |
| 12/1/2009  | 0  | JUAN O CALDERON<br>LITHGOW*                 | 6238786            | ATTORNEY FEE - MONTHLY<br>DISBURSEMENTS                    |          | \$178.88   |
| 12/1/2009  | 1  | MONEY EXPRESS                               | 6238713            | CREDITOR PAYMENT<br>(PRINCIPAL) - MONTHLY<br>DISBURSEMENTS |          | \$12.90    |
| 12/1/2009  | 2  | BANCO POPULAR DE<br>PUERTO RICO             | 6238716            | CREDITOR PAYMENT<br>(PRINCIPAL) - MONTHLY<br>DISBURSEMENTS |          | \$39.67    |
| 12/1/2009  | 8  | PR ACQUISITIONS LLC                         | 538891             | CREDITOR PAYMENT<br>(PRINCIPAL) - MONTHLY<br>DISBURSEMENTS |          | \$17.07    |
| 12/1/2009  | 15 | SANTANDER FINANCIAL<br>D/B/A ISLAND FINANCE | 538795             | CREDITOR PAYMENT<br>(PRINCIPAL) - MONTHLY<br>DISBURSEMENTS |          | \$14.83    |
| 12/1/2009  | 17 | GE MONEY BANK                               | 6238823            | CREDITOR PAYMENT<br>(PRINCIPAL) - MONTHLY<br>DISBURSEMENTS |          | \$6.42     |
| 12/1/2009  | 18 | WESTERNBANK                                 | 539799             | CREDITOR PAYMENT<br>(PRINCIPAL) - MONTHLY<br>DISBURSEMENTS |          | \$22.99    |
| 12/1/2009  |    | JOSE R. CARRION                             | 539593             | TRUSTEE SALARY & EXPENSE -<br>MONTHLY DISBURSEMENTS        |          | \$31.63    |
| 11/6/2009  |    |   | 0602 00021<br>4300 | LOCKBOX CORRECTIONS  | \$325.00 |            |
| 11/2/2009  | 0  | JUAN O CALDERON<br>LITHGOW*                 | 6238691            | ATTORNEY FEE - MONTHLY<br>DISBURSEMENTS                    |          | \$293.31   |
| 11/2/2009  |    | JOSE R. CARRION                             | 537370             | TRUSTEE SALARY & EXPENSE -<br>MONTHLY DISBURSEMENTS        |          | \$31.69    |
| 10/14/2009 |    |   | 0602 00161<br>5156 | LOCKBOX CORRECTIONS  | \$325.00 |            |
| 10/1/2009  | 0  | JUAN O CALDERON<br>LITHGOW*                 | 6238492            | ATTORNEY FEE - MONTHLY<br>DISBURSEMENTS                    |          | \$293.31   |
| 10/1/2009  |    | JOSE R. CARRION                             | 535395             | TRUSTEE SALARY & EXPENSE -<br>MONTHLY DISBURSEMENTS        |          | \$31.69    |
| 9/8/2009   |    |   | 0655 00701<br>4017 | LOCKBOX PAYMENT  | \$325.00 |            |
| 9/1/2009   | 0  | JUAN O CALDERON<br>LITHGOW*                 | 6238260            | ATTORNEY FEE - MONTHLY<br>DISBURSEMENTS                    |          | \$292.50   |
| 9/1/2009   |    | JOSE R. CARRION                             | 533155             | TRUSTEE SALARY & EXPENSE -<br>MONTHLY DISBURSEMENTS        |          | \$32.50    |
| 8/5/2009   |    |   | 0652 00061<br>0090 | LOCKBOX PAYMENT  | \$325.00 |            |
| 8/1/2009   | 0  | JUAN O CALDERON<br>LITHGOW*                 | 6238068            | ATTORNEY FEE - MONTHLY<br>DISBURSEMENTS                    |          | \$1,566.00 |
| 8/1/2009   |    | JOSE R. CARRION                             | 531169             | TRUSTEE SALARY & EXPENSE -<br>MONTHLY DISBURSEMENTS        |          | \$174.00   |
| 7/3/2009   |    |   | 0657 00641<br>0990 | LOCKBOX PAYMENT  | \$325.00 |            |
| 6/9/2009   |    |   | 0653 00361<br>6453 | LOCKBOX PAYMENT  | \$283.00 |            |
| 5/18/2009  |    |   | 0655 00061<br>0090 | LOCKBOX PAYMENT  | \$283.00 |            |
| 4/15/2009  |    |   | 0503 00940<br>5614 | LOCKBOX PAYMENT  | \$283.00 |            |
| 4/2/2009   |    |   | 0653 00081<br>0090 | LOCKBOX PAYMENT  | \$283.00 |            |

Department of Defense Manpower Data Center

Sep-24-2010 13:55:34



Military Status Report  
Pursuant to the Service Members Civil Relief Act

| ◀ Last Name     | First/Middle | Begin Date | Active Duty Status   | Active Duty End Date | Service Agency |
|-----------------|--------------|------------|--|----------------------|----------------|
| VAZQUEZ<br>DIAZ | ADRIAN       |            | Based on the information you have furnished, the DMDC does not possess any information indicating the individual status. |                      |                |

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavely-Dixon, Director  
Department of Defense - Manpower Data Center  
1600 Wilson Blvd., Suite 400  
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

***More information on "Active Duty Status"***

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

***Coverage Under the SCRA is Broader in Some Cases***

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

**WARNING:** This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID:DL9S9DLGDR